

Jeffrey A. Masoner
Vice President
Interconnection Services Policy and Planning
Wholesale Marketing



2107 Wilson Boulevard
Arlington, VA 22201

Phone 703 974-4610
Fax 703 974-0314
jeffrey.a.masoner@verizon.com

August 9, 2002

W. Scott Schaeffer
President and CEO
QuantumShift Communications, Inc.
88 Rowland Way
Novato, California 94945

Re: Requested Adoption Under the FCC Merger Conditions

Dear Mr. Schaeffer:

Verizon New England Inc., d/b/a Verizon Maine, f/k/a New England Telephone and Telegraph Company, d/b/a Bell Atlantic - Maine ("Verizon"), a New York corporation with principal place of business at 185 Franklin Street, Boston, Massachusetts 02110, has received your letter stating that, pursuant to paragraph 32 of the BA/GTE Merger Conditions ("Merger Conditions"), released by the FCC on June 16, 2000 in CC Docket No. 98-184, QuantumShift Communications, Inc. ("QuantumShift"), a California corporation with principal place of business at 88 Rowland Way, Novato, California 94945, wishes to provide services to customers in Verizon's service territory in the State of Maine by adopting the voluntarily negotiated terms of the arbitrated Interconnection Agreement between Sprint Communications Company, L.P. ("Sprint") and Verizon New England Inc., d/b/a Verizon Massachusetts, f/k/a New England Telephone and Telegraph Company, d/b/a Bell Atlantic - Massachusetts ("Verizon Massachusetts") that was approved by the Massachusetts Department of Telecommunications and Energy as an effective agreement in the Commonwealth of Massachusetts, as such agreement exists on the date hereof after giving effect to operation of law (the "Verizon Massachusetts Terms").

I understand that QuantumShift has a copy of the Verizon Massachusetts Terms which, in any case, are attached hereto as Appendix 1. Please note the following with respect to QuantumShift's adoption of the Verizon Massachusetts Terms.

1. By QuantumShift's countersignature on this letter, QuantumShift hereby represents and agrees to the following three points:

- (A) QuantumShift agrees to be bound by and adopts in the service territory of Verizon, the Verizon Massachusetts Terms, as they are in effect on the date hereof after giving effect to operation of law, and in applying the Verizon Massachusetts Terms, agrees that QuantumShift shall be substituted in place of Sprint Communications Company, L.P. and Sprint in the Verizon Massachusetts Terms wherever appropriate.
- (B) Notice to QuantumShift and Verizon as may be required or permitted under the Verizon Massachusetts Terms shall be provided as follows:

To QuantumShift:

Ms. Jenna Brown
QuantumShift Communications, Inc.
88 Rowland Way
Novato, California 94945
Telephone Number: 415-209-7004
Facsimile Number: 415-899-8339
Email Address: jbrown@quantumshift.com

With a copy to:

Attention: Patrick J. O'Connor
Gray Cary Ware & Freidenrich LLP
1625 Massachusetts Avenue, NW, Suite 300
Washington, D.C. 20036
Telephone Number: 202-238-7722
Facsimile Number: 202-238-7701
Internet Address: poconnor@graycary.com

To Verizon:

Director-Contract Performance & Administration
Verizon Wholesale Markets
600 Hidden Ridge
HQEWMNOTICES
Irving, TX 75038
Telephone Number: 972-718-5988
Facsimile Number: 972-719-1519
Internet Address: wmnotices@verizon.com

with a copy to:

Vice President and Associate General Counsel
Verizon Wholesale Markets
1515 North Court House Road
Suite 500
Arlington, VA 22201
Facsimile: 703/351-3664

- (C) QuantumShift represents and warrants that it is a certified provider of local telecommunications service in the State of Maine, and that its adoption of the Verizon Massachusetts Terms will only cover services in the service territory of Verizon in the State of Maine.
2. QuantumShift's adoption of the Verizon Massachusetts Terms shall become effective on August 15, 2002. Verizon shall file this adoption letter with the Maine Public Utilities Commission ("Commission") promptly upon receipt of an original of this letter, countersigned by an authorized officer of QuantumShift. The term and termination provisions of the Sprint/Verizon Massachusetts agreement shall govern QuantumShift's adoption of the Verizon Massachusetts Terms. QuantumShift's adoption of the Verizon Massachusetts Terms is currently scheduled to expire on July 19, 2004.
 3. As the Verizon Massachusetts Terms are being adopted by QuantumShift pursuant to the Merger Conditions, Verizon does not provide the Verizon Massachusetts Terms to QuantumShift as either a voluntary or negotiated agreement. The filing and performance by Verizon of the Verizon Massachusetts Terms does not in any way constitute a waiver by Verizon of any position as to the Verizon Massachusetts Terms or a portion thereof. Nor does it constitute a waiver by Verizon of any rights and remedies it may have to seek review of the Verizon Massachusetts Terms, or to seek review of any provisions included in these Verizon Massachusetts Terms as a result of QuantumShift's election pursuant to the Merger Conditions.
 4. For avoidance of doubt, please note that adoption of the Verizon Massachusetts Terms will not result in reciprocal compensation payments for Internet traffic. Verizon has always taken the position that reciprocal compensation was not due to be paid for Internet traffic under section 251(b)(5) of the Act. Verizon's position that reciprocal compensation is not to be paid for Internet traffic was confirmed by the FCC in the Order on Remand and Report and Order adopted on April 18, 2001 ("*FCC Remand Order*"), which held that Internet traffic constitutes "information access" outside the scope of the reciprocal compensation obligations set forth in section 251(b)(5) of the Act.¹ Accordingly, compensation

¹ Order on Remand and Report and Order, In the Matters of: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68 (rel. April 27, 2001) ("*FCC Remand Order*") ¶44, *remanded*, *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. May 3, 2002). Although the D.C. Circuit remanded the *FCC Remand Order* to permit the FCC to clarify its reasoning, it left the order in place as governing federal law. See *WorldCom, Inc. v. FCC*, No. 01-1218, slip op. at 5 (D.C. Cir. May 3, 2002).

for Internet traffic – if any – is governed by the terms of the *FCC Remand Order*, not pursuant to adoption of the Verizon Massachusetts Terms.² Moreover, in light of the *FCC Remand Order*, even if the Verizon Massachusetts Terms include provisions invoking an intercarrier compensation mechanism for Internet traffic, any reasonable amount of time permitted for adopting such provisions has expired under the FCC’s rules implementing section 252(i) of the Act.³ In fact, the *FCC Remand Order* made clear that carriers may not adopt provisions of an existing interconnection agreement to the extent that such provisions provide compensation for Internet Traffic.⁴

5. QuantumShift’s adoption of the Verizon Massachusetts Terms pursuant to the Merger Conditions is subject to all of the provisions of such Merger Conditions. Please note that the Merger Conditions exclude the following provisions from the interstate adoption requirements: state-specific pricing, state-specific performance measures, provisions that incorporate a determination reached in an arbitration conducted in the relevant state under 47 U.S.C. Section 252 and provisions that incorporate the results of negotiations with a state commission or telecommunications carrier outside of the negotiation procedures of 47 U.S.C. Section 252(a)(1). Verizon, however, does not oppose QuantumShift’s adoption of the Verizon Massachusetts Terms at this time, subject to the following reservations and exclusions:
 - (A) Verizon’s standard pricing schedule for interconnection agreements in Maine (as such schedule may be amended from time to time) (attached as Appendix 2 hereto), which includes (without limitation) rates for reciprocal compensation, shall apply to QuantumShift’s adoption of the Verizon Massachusetts Terms. QuantumShift should note that the aforementioned pricing schedule may contain rates for certain services the terms for which are not included in the Verizon Massachusetts Terms or that are otherwise not part of this adoption. In an effort to expedite the adoption process, Verizon has not deleted such rates from the pricing schedule. However, the inclusion of such rates in no way obligates Verizon to provide the subject services and in no way waives Verizon’s rights under the Merger Conditions.
 - (B) QuantumShift’s adoption of the Verizon Massachusetts Terms shall not obligate Verizon to provide any interconnection arrangement or unbundled network element unless it is feasible to provide given the technical,

² For your convenience, an industry letter distributed by Verizon explaining its plans to implement the *FCC Remand Order* can be viewed at Verizon’s Customer Support Website at URL www.verizon.com/wise (select Verizon East Customer Support, Resources, Industry Letters, CLEC).

³ See, e.g., 47 C.F.R. Section 51.809(c). These rules implementing section 252(i) of the Act apply to interstate adoptions under the Merger Conditions as well. See, e.g., Merger Conditions ¶32 (such adoptions shall be made available “under the same rules that would apply to a request under 47 U.S.C. Section 252(i)”).

⁴ *FCC Remand Order* ¶82.

network and Operations Support Systems attributes and limitations in, and is consistent with the laws and regulatory requirements of the State of Maine and with applicable collective bargaining agreements.

- (C) Nothing herein shall be construed as or is intended to be a concession or admission by Verizon that any provision in the Verizon Massachusetts Terms complies with the rights and duties imposed by the Act, the decisions of the FCC and the Commissions, the decisions of the courts, or other law, and Verizon expressly reserves its full right to assert and pursue claims arising from or related to the Verizon Massachusetts Terms.
 - (D) Terms, conditions and prices contained in Tariffs cited in the Verizon Massachusetts Terms shall not be considered negotiated and are excluded from QuantumShift's adoption. Please note that the Verizon Massachusetts Terms contain numerous references to the Massachusetts Department of Telecommunications and Energy's Tariff No. 17 and other Tariffs. As these references are excluded from this adoption, please contact Verizon at your earliest convenience to amend QuantumShift's adoption regarding any Tariff terms, conditions and prices.
 - (E) QuantumShift's adoption does not include any terms that were arbitrated in the Verizon Massachusetts Terms.⁵
6. Verizon reserves the right to deny QuantumShift's adoption and/or application of the Verizon Massachusetts Terms, in whole or in part, at any time:
- (A) when the costs of providing the Verizon Massachusetts Terms to QuantumShift are greater than the costs of providing them to Sprint;
 - (B) if the provision of the Verizon Massachusetts Terms to QuantumShift is not technically feasible;
 - (C) if Verizon otherwise is not obligated to permit such adoption and/or application under the Merger Conditions or under applicable law.
7. Should QuantumShift attempt to apply the Verizon Massachusetts Terms in a manner that conflicts with paragraphs 3-6 above, Verizon reserves its rights to seek appropriate legal and/or equitable relief.

In the event that a voluntary or involuntary petition has been or is in the future filed against QuantumShift under bankruptcy or insolvency laws, or any law relating to the relief of debtors, readjustment of indebtedness, debtor reorganization or composition or extension of debt (any such proceeding, an "Insolvency Proceeding"), then: (i) all rights

⁵ Please contact Verizon at your earliest convenience to amend QuantumShift's adoption regarding any arbitrated terms.

of Verizon under such laws, including, without limitation, all rights of Verizon under 11 U.S.C. § 366, shall be preserved, and QuantumShift's adoption of the Verizon Massachusetts Terms shall in no way impair such rights of Verizon; and (ii) all rights of QuantumShift resulting from QuantumShift's adoption of the Verizon Massachusetts Terms shall be subject to and modified by any Stipulations and Orders entered in the Insolvency Proceeding, including, without limitation, any Stipulation or Order providing adequate assurance of payment to Verizon pursuant to 11 U.S.C. § 366.

Please arrange for a duly authorized representative of QuantumShift to sign this letter in the space provided below and return it to the undersigned.

Sincerely,

VERIZON NEW ENGLAND INC. D/B/A VERIZON MAINE

Jeffrey A. Masoner
Vice President – Interconnection Services Policy & Planning

Reviewed and countersigned as to points A, B, and C of paragraph 1:

QUANTUMSHIFT COMMUNICATIONS, INC.

By _____

Title _____

Attachment

c: Stephen Hughes - Verizon (w/out attachments)